

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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JEFFREY BLANE HOUGHTALING,

Plaintiff,

v.

OSI DOWNES and PAROLE OFFICER  
JOHN PESTILLO,

Defendants.

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**DECISION AND ORDER**

6:20-CV-06168 EAW

On July 11, 2023, Defendants filed a motion to dismiss Plaintiff's claims pursuant to Rules 16(f), 37(b)(2), and 41(b) of the Federal Rules of Civil Procedure, based on Plaintiff's failure to participate in discovery and failure to comply with court orders regarding discovery. (Dkt. 93). Defendants further requested an order directing Plaintiff to pay their attorney's fees incurred in connection with bringing the motion to dismiss. (*Id.*). On October 11, 2023, United States Magistrate Judge Mark W. Pedersen, to whom this case was referred pursuant to 28 U.S.C. § 636(b)(1)(A) and (B) (Dkt. 66), issued a Report and Recommendation, recommending that the Court grant Defendants' motion to dismiss (Dkt. 95). Judge Pedersen further recommended that the Court grant Defendants' request for \$1,950.00 in attorney's fees incurred in connection with bringing their motion to dismiss.<sup>1</sup> (*Id.* at 21-22).

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<sup>1</sup> In his Report and Recommendation, Magistrate Judge Pederson found that defense counsel's 6.5 hours of work performed on the motion, at a rate of \$300 per hour, to be reasonable. (Dkt. 95 at 21-22). The Court finds that the \$300 hourly rate for defense counsel, who is an experienced government attorney, to be proper. *See New York v. Grand*

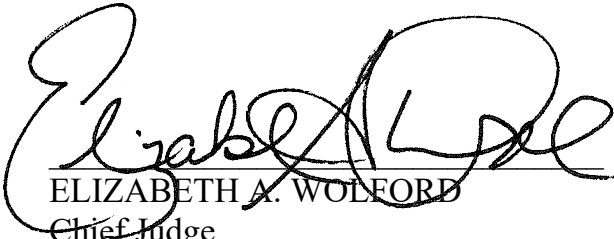
Pursuant to 28 U.S.C. § 636(b)(1), the parties had 14 days to file objections to the Report and Recommendation. No objections were filed. The Court is not required to review *de novo* those portions of a report and recommendation to which objections were not filed. *See Mario v. P&C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure [to timely] object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”).

Notwithstanding the lack of objections, the Court has conducted a careful review of the Report and Recommendation, as well as the prior proceedings in the case, and finds no reason to reject or modify the Report and Recommendation of Magistrate Judge Pedersen. Therefore, the Court accepts and adopts the Report and Recommendation. For the reasons set forth in the Report and Recommendation, the Court grants Defendants’ motion to dismiss. Further, the Court grants Defendants’ request for attorney’s fees in the amount of \$1,950.00. The Clerk of Court is directed to enter judgment in favor of Defendants and to close this case.

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*River Enters. Six Nations, Ltd.*, No. 14-CV-910A(F), 2021 WL 4958653, at \*3 (W.D.N.Y. Oct. 26, 2021) (“[D]istrict courts in this Circuit generally employ market rates to calculate awards of government attorneys’ fees.” (quoting *NLRB v. Local 3, Intern. Broth. Of Elec. Workers*, 471 F.3d 399, 407 (2d Cir. 2006))).

SO ORDERED.



ELIZABETH A. WOLFORD  
Chief Judge  
United States District Court

Dated: November 6, 2023  
Rochester, New York